

3M EXHIBIT 61

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STATE OF MICHIGAN

KENT COUNTY CIRCUIT COURT

Court File No. 2017-10716-CZ

In re Nylaan Litigation

VIDEOTAPED DEPOSITION OFRICHARD A. NEWMARK, PhD

Taken October 23, 2019 By Kelly A. Herrick

1 APPEARANCES:

2

3 MOTLEY RICE LLC

4 28 Bridgeside Blvd.

5 Mt. Pleasant, South Carolina 29464

6 Phone: 843.216.9032

7 Email: Dhoyle@motleyrice.com

8 Rfonseca@motleyrice.com

9 By: T. David Hoyle

10 Rebecca A. Fonseca

11 For the Plaintiffs

12 QUINN EMANUEL URQUHART & SULLIVAN, LLP

13 865 South Figueroa Street

14 10th Floor

15 Los Angeles, California 90017

16 Phone: 213.443.3669

17 Email: Davegrable@quinnemanuel.com

18 Andrewbrayton@quinnemanuel.com

19 By: David M. Grable

20 Andrew Brayton

21 For Wolverine

22 GOLDMAN ISMAIL TOMASELLI BRENNAN & BAUM LLP

23 564 West Randolph Street

24 Suite 400

25 Chicago, Illinois 60661

26 Phone: 312.681.6000

27 Email: Bodonoghue@goldmanismail.com

28 Sshinton@goldmanismail.com

29 By: Brian P. O'Donoghue

30 Symone D. Shinton

31 For the 3M and the witness

32

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34 Also present: Kraig Hildahl, Videographer

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1 I N D E X

2 Examination by Mr. Hoyle, page 5

3 Examination by Mr. Grable, page 120

4 Examination by Mr. Hoyle, page 192

5 Examination by Mr. O'Donoghue, page 196

6 Examination by Mr. Hoyle, page 216

7 Examination by Mr. Grable, page 230

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9 INDEX OF EXHIBITS

10

11 NUMBER DESCRIPTION

12

13 Exhibit 1724 3M_NYLAAN00617346-47,
14 page 17215 Exhibit 1725 3M_NYLAAN01153396-98,
16 page 174

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18 Exhibit 1726 3M_NYLAAN00080559-60,
19 Page 183

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27 PREVIOUSLY MARKED EXHIBITS REFERRED TO:

28 758, 533, 793, 444, 532, 535, 501, 536

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1 MR. O'DONOGHUE: Objection to form.

2 THE WITNESS: Yes.

3 BY MR. HOYLE:

4 Q. The statement that you made in this report,
5 which I've marked as Exhibit 535 in this
6 litigation, that PFOSH most closely
7 resembled the fluorine NMR spectrum given at
8 the Chicago ACS meeting on August 26, 1975
9 by W.S. Guy, was that statement one that you
10 made based upon your expertise in the field
11 of NMR analysis?

12 MR. O'DONOGHUE: Objection to form.

13 THE WITNESS: Yes.

14 BY MR. HOYLE:

15 Q. Did you believe that to be a true statement
16 when you made it?

17 A. Yes.

18 Q. And by "true statement," I could expand that
19 and say, did you believe it to be an
20 accurate statement?

21 A. The problem is that NMR spectra are
22 sensitive to a lot of conditions in the way
23 they are run, such as the sample
24 concentration, the solvents used, any other
25 contaminants in that solution.

1 Q. I appreciate that answer, but my question to
2 you was: When you made this statement that
3 you signed your name to on November 6, 1975,
4 did you believe it to be accurate?

5 MR. O'DONOGHUE: Objection: Form;
6 asked and answered.

7 THE WITNESS: The statement says it
8 most closely resembles. It does not say it
9 is.

10 BY MR. HOYLE:

11 Q. Did you ever do any analysis, after this
12 report was generated on November 6, 1975, in
13 which you compared additional samples and
14 their NMR spectrum to the spectrum presented
15 by Dr. Guy in Chicago in August of 1975?

16 A. I don't recall.

17 Q. As you sit here today, you have no
18 recollection of ever doing additional work
19 after this report was generated on
20 November 6, 1975 which I've marked as
21 Exhibit 535; is that fair?

22 MR. O'DONOGHUE: Objection to form.

23 THE WITNESS: I don't recall
24 doing -- what was your original statement on
25 that?

1 A. I have it.

2 Q. And this is the Guy and Taves prepublication
3 that counsel reviewed with you earlier in
4 your deposition, correct?

5 A. Yes.

6 Q. Does Guy and Taves establish that there was
7 widespread PFOS or PFOA in
8 nonoccupationally-exposed people's blood?

9 MR. GRABLE: Objection to form.

10 THE WITNESS: No.

11 BY MR. O'DONOGHUE:

12 Q. Why not?

13 A. Because they pooled a hundred samples of
14 blood, and there could have been one or two
15 people who had high levels of their -- of
16 organic fluoride in their blood.

17 And it also should be noted that
18 they only recovered 30 -- roughly 30 percent
19 of the organic fluorine.

20 Q. That's two points, and let's break those
21 down. So, first of all, does Guy and Taves'
22 article say anything about the occupations
23 of the people in the pooled blood that you
24 used?

25 A. No.

1 Q. And why might that be important to know?

2 A. Because people who are exposed to these
3 fluorochemicals in their occupations would
4 have a higher level of fluorochemical in
5 their blood.

6 Q. And then you said that it should also be
7 noted that they only recovered roughly 30
8 percent of the organic fluorine, correct?

9 A. Yes.

10 Q. I'd like you to turn to page 8 of the center
11 numbers on the article, if you would.

12 And if you would go down to the
13 bottom -- in fact, it's underlined in this
14 draft -- it says, "These data show that
15 about one-third of the original amount of
16 organic fluorine in plasma is recovered in
17 the major peak from the silicic acid
18 chromatography. Another third is accounted
19 for in other fractions and the rest is not
20 accounted for, presumably because of
21 adsorption to surfaces of containers in
22 which samples were placed."

23 Do you see that, sir?

24 A. Yes.

25 Q. So, what is your understanding of what that

1 sentence means -- those sentences mean?

2 A. That, when we are looking -- when they were
3 looking at the NMR fractions, they were only
4 looking at one-third of the total organic
5 fluorine that was collected in the blood
6 bank samples.

7 Q. Does it matter, in terms of the NMR spectra
8 that was reported in Guy and Taves, that
9 only 30 percent of the total organic
10 fluorine from the plasma of blood banks was
11 part of the of sample analyzed?

12 MR. GRABLE: Objection to form.

13 MR. HOYLE: Join.

14 THE WITNESS: It's important to
15 understand that there was a lot of other
16 possible organic fluorine that we -- they
17 have not identified.

18 BY MR. O'DONOGHUE:

19 Q. And, percentagewise, how much of --
20 according to Guy and Taves, how much had
21 they not identified?

22 A. They did not identify 33 percent -- I mean
23 67 percent. They only identified
24 33 percent.

25 Q. So, the majority?

1 A. Yes.

2 Q. And if you turn to page 10 of the center
3 numbers of the article, and again someone
4 has underlined this for us already.

5 It says, "The prevalence of the
6 particular compounds isolated and
7 characterized here, i.e., perfluoro fatty
8 acid (C6-C8) derivatives, is not known since
9 the starting material for each batch shown
10 in Figure 4 was pooled from between 25 and
11 30 individuals and since only about one
12 third of the original organic fluorine
13 content was accounted for in the fractions
14 containing these compounds."

15 Do you see that, sir?

16 A. Yes.

17 Q. What do you understand that to mean?

18 A. That, again, just a couple of individuals
19 could have had high fluorine levels, and we
20 are -- and they are looking at the total
21 organic fluorine, after combining all 100
22 samples, or whatever samples were left after
23 their earlier analyses.

24 Q. Is it possible that the spectra shown in the
25 Guy and Taves article is that of only one or

1 two of the 106 people's plasma that was
2 used?

3 MR. GRABLE: Objection to form.

4 MR. HOYLE: Objection: Foundation.

5 THE WITNESS: Yes.

6 BY MR. O'DONOGHUE:

7 Q. Does the NMR spectra in Guy and Taves'
8 article necessarily reflect the identity of
9 the compound that makes up the majority of
10 the organic fluorine in the human blood
11 samples they started with?

12 MR. GRABLE: Objection to form;
13 foundation.

14 MR. HOYLE: Join.

15 THE WITNESS: Because we don't know
16 what the other 67 percent of the organic
17 fluorine is, we can't be absolutely certain
18 of that.

19 BY MR. O'DONOGHUE:

20 Q. If you could pull Exhibit 535 in front of
21 you. This is the Central Analytical
22 Laboratory report from November 6, 1975 you
23 ran as a comparator to Guy and Taves?

24 A. Yes.

25 Q. Do you have it there, sir?

1 A. Yes.

2 Q. So, Counsel asked you a number of questions
3 about this exhibit where you wrote, "Of the
4 compounds submitted C8F17SO3H resembled most
5 closely the fluorine NMR spectrum given at
6 the Chicago A.C.S. meeting in August 26,
7 1975, by W.S. Guy."

8 Do you see that?

9 A. Yes.

10 Q. And just as a language issue, I believe
11 opposing counsel established with you that
12 C8F17SO3H is PFOSH or perfluorooctanoic
13 sulfonic acid; is that correct?

14 A. Yes.

15 Q. Was your NMR spectra analysis definitive
16 identification of the compound in the Guy
17 and Taves article as perfluorooctanoic
18 sulfonic acid?

19 MR. GRABLE: Objection to form.

20 MR. HOYLE: Join.

21 THE WITNESS: No. It just says it
22 most closely resembled that material.

23 BY MR. O'DONOGHUE:

24 Q. And why was it not definitive, sir?

25 MR. GRABLE: Same objection.

1 MR. HOYLE: Join.

2 THE WITNESS: There are two things
3 to be considered: One is we could never --
4 we did not have their sample in order to
5 spike it, or somehow compare it definitively
6 with the sample that we had.

7 Second, all NMR spectra are very
8 sensitive to concentration and solvent, and
9 I am quite certain that we did not run the
10 spectra at the same low concentration that
11 they did because it took them 16 hours,
12 roughly, to obtain their spectra, and our
13 instrument was no more sensitive than their
14 instrument.

15 BY MR. O'DONOGHUE:

16 Q. Turning to page 9 of the Guy and Taves
17 article, sir, down at the bottom there it
18 says: The difference in shift for Peak E is
19 consistent with the presence of, and then it
20 lists some compounds, or possibly the
21 presence of a sulfonic acid derivative as
22 the functional group.

23 Do you see that, sir?

24 A. Yes.

25 Q. Did the Guy and Taves article identify